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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: SANDERS ET AL.

Appln. No.: 09/954,506

Filed: September 14, 2001

For: METHOD AND APPARATUS FOR
ASSEMBLING REFASTENABLE
ABSORBENT GARMENT

Examiner: Piazza Corcoran,
Gladys Josefina

Art Unit: 1733

Attorney Docket No: 659-877

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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

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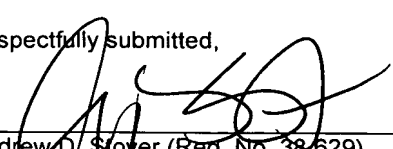
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Respectfully submitted,


Andrew D. Stoyer (Reg. No. 38,629)

August 30, 2005
Date

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Date of Deposit: August 30, 2005

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& LIONE

Our Case No. 659/877
K-C Ref. No. 16,569

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Sanders, et al.

Serial No.: 09/954,506

Filing Date: September 14, 2001

For: METHOD AND APPARATUS FOR
ASSEMBLING REFASTENABLE
ABSORBENT GARMENT

Examiner: Piazza Corcoran, Gladys Josefina

Group Art Unit No.: 1733

APPELLANTS' BRIEF

MS APPEAL BRIEF - PATENTS
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the Final Rejection dated April 6, 2005 of Claims 1-32 and 34-

49.

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(1) REAL PARTY IN INTEREST

The inventors assigned their interests in the invention to Kimberly-Clark Worldwide, Inc. The real party in interest is Kimberly-Clark Corporation, which is the corporate parent of Kimberly-Clark Worldwide, Inc.

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(3) RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences that will directly affect or be directly affected by or have a bearing on this appeal.

(4) STATUS OF CLAIMS

Claims 1-32 and 34-49 are pending in the above-referenced application. Claims 33 and 50-55 were previously cancelled. Claims 1-32 and 34-49 (Appendix A) have been rejected.

(5) STATUS OF AMENDMENTS

The rejected claims (Appendix A) are in the form as referred to in the Final Rejection of April 6, 2005.

Applicants further note that the Examiner has refused to enter a Drawing Amendment filed January 18, 2005. Applicants filed the Drawing Amendment in response to a drawing objection made in an Office Action mailed October 13, 2004. In the Drawing Amendment filed January 18, 2005, Applicants amended the drawings by substituting reference number – 37 – for number “32” in Figure 2. In the Final Office Action mailed April 6, 2005, the Examiner has objected to the drawings and refused to enter the amendment on the basis that the reference characters 37 are pointing to the wrong dashed line.

Applicants submit that the reference numbers 37 are properly directed to the lines of weakness in the body panel, as referenced in the Specification at page 16, lines 1-8. Indeed, FIG. 2 does not even have a separate landing member 100 secured thereto, so it is impossible for the line to be directed to an edge thereof as asserted by the Examiner (*see* Specification at page 16, lines 1-2 (“Referring to the embodiment of FIG. 2, the middle portion 33 does not

include a separate landing member [100] secured thereto.”)). Accordingly, Applicants respectfully request that the previously filed Drawing Amendment be entered.

(6) SUMMARY OF CLAIMED SUBJECT MATTER

In general, the present invention relates to an improved method of manufacturing a refastenable absorbent garment, such as infant diapers, training pants and adult incontinence garments (Specification at page 1, lines 7-8; page 2, lines 4-5; Figure 1). Absorbent garments are typically configured as pant-type, pull-on garments, or as refastenable diaper-type products that are drawn up between the legs and fastened about the waist (Specification at page 1, lines 7-10). Conventional pant-type garments typically do not include a refastenable mechanism that allows the garment to be easily removed after use or to be adjusted during use (Specification at page 1, lines 13-14). Alternatively, pant-type garments can be configured with a refastenable mechanism (Specification at page 3, lines 11-21).

Manufacturing facilities, however, are often configured to fabricate one particular type of product, but may not be able to transition between fabricating a conventional pull-on type garment and fabricating a refastenable, pull-on type garment (Specification at page 1, line 26 to page 2, line 1). The improved method allows the manufacturer to easily switch between the manufacture of a non-refastenable, pant-type product and a refastenable product simply by introducing a fastener material, or a plurality of fastener members, and applying those fastener members to one or both of a front and rear body panel (Specification at page 4, lines 1-5).

With reference to independent claim 1, the method for manufacturing a refastenable absorbent garment includes moving a continuous absorbent garment subassembly in a first

machine direction. The continuous absorbent garment subassembly includes a continuous front body panel web 120, a continuous rear body panel web 148 and a plurality of discrete crotch portions 50 spaced along the first machine direction (Specification at page 37, lines 10-17; FIGS. 7 and 8). Each of the continuous front and rear body panel webs has terminal crotch and waist edges 16, 20, 14, 18 (Specification at page 7, lines 18-23; FIGS. 2 and 8), with the terminal crotch edges of the front and rear body panel webs spaced apart in a cross-direction (FIGS. 2 and 8). The crotch members 50 extend between the front and rear body panels webs and across the spaced apart terminal crotch edges 16, 14 thereof (FIGS. 2 and 8). The crotch portions 50 each have opposite edge portions 60, 62 spaced in the cross-direction and spaced from the terminal waist edges of the front and rear body panel webs (Specification at 24, lines 9-11; page 28, lines 20-24; FIGS. 2 and 8).

The method further includes moving a fastener material 104, 110 in a second machine direction (Specification at page 29, lines 7-17; FIG. 6), cutting the fastener material to define a plurality of fastener members 42 (Specification at page 31, lines 1-10; FIGS. 5 and 11) and successively rotating each of said fastener members 42 about an axis substantially perpendicular to the second machine direction (Specification 31, lines 15-19; FIGS. 5, 6, 8 and 11). The method further includes applying each of the rotated fastener members to one of the front or rear body panel webs (Specification at page 31, lines 18-19; FIGS. 5, 6, 8 and 11).

With reference to dependent claim 15, the fastener members 42 each include a refastenable portion 51 and a base portion (Specification at page 31, lines 5-10; FIGS. 5 and 11). The method of claim 15 further includes releasably engaging one of the front or rear

body panel webs with the refastenable portion 51 (Specification at page 33, lines 1-11; FIG. 8).

With reference to independent claim 32, the method includes moving a base web in a first machine direction, moving a web of fastener material in a second machine direction and cutting the fastener material in the second machine direction to form at least two strips of fastener material moving in the second machine direction (Specification at page 29, lines 7-15; FIGS. 6 and 8). The method further includes cutting the two strips of fastener material to define first and second streams 208, 210 of a plurality of fastener members (Specification at page 31, lines 1-3; FIGS. 5 and 11). The method further includes successively rotating each of the fastener members about an axis substantially perpendicular to the second machine direction in each of the first and second streams and applying the fastener members to the base web (Specification at page 31, line 15 to page 32, line 3; page 32, lines 17-23; FIGS. 5 and 11). The fastener members in the first stream are sequentially located relative to the fastener members in the second stream on the base web in an alternating relationship along the first machine direction (*id.*).

(7) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner rejected independent claim 1, 2, 7-12, and 14-31 as being made obvious over UK patent application GB 2 308 290 A to Fernfors in view of Japanese reference JP 03176053 to Takao, as further taken with U.S. Patent No. 5,476,702 to Datta, U.S. Patent No. 5,224,405 to Pohjola and/or U.S. Patent No. 5,556,504 to Rajala. The Examiner rejected claim 32, 34-40, 48 and 49 as being made obvious over Rajala in view of

Roessler and/or Justmann. The Examiner rejected claims 32 and 41-47 as being made obvious over Fernfors in view of Widlund, Rajala and Roessler and/or Justmann.

(8) ARGUMENT

1. Claims 1-31 Are Not Obvious Over UK Patent application GB 2 308 290 A to Fernfors in view of Japanese reference JP 03176053 to Takao, as further taken with USP 5,476,702 to Datta, USP 5,224,405 to Pohjola and/or USP 5,556,504 to Rajala¹

The Examiner has rejected independent claim 1 as being made obvious over UK patent application GB 2 308 290 A to Fernfors in view of U.S. Patent No. 5,476,702 to Datta, U.S. Patent No. 5,224,405 to Pohjola and/or U.S. Patent No. 5,556,504 to Rajala.

As stated by the Examiner, Fernfors does not disclose or suggest any particulars as to how the fastener members are applied (Office Action at 5). Applicants respectfully disagree. Fernfors teaches the application of fastener members, but teaches *away* from Applicants' claimed method. Moreover, there is no suggestion to combine the references as asserted by the Examiner. Accordingly, the Examiner has failed to make out a prima facie case of obviousness and the claims should be passed to allowance.

In particular, Fernfors discloses that fastener strips 8 and 13 each have a material surplus 9, 14, or loop, formed above the line of separation, which results in a gap being left beneath the surplus 9, 14 (Fernfors at page 7, lines 8-24; FIG. 1). During the manufacturing process, the lines of separation are broken, with the surplus material 9,14 flattening out by the application of a tensile force (Fernfors at page 8, lines 5-10). The first and second strips

¹ Applicants hereby argue the patentability of all of the rejected claims (1-31) together, including claims 2 and 7-14, which were rejected over the references applied to claim 1 in combination with EP reference 0755238 to Widlund, and claims 3-6, which were rejected over the references applied to claim 2 in combination with USP 5,499,219 to Roessler and/or USP 5,900,101 to Justmann. In addition, Applicants have separately argued the patentability of claim 15 as set forth below.

remain intact, since they are not subject to any excessive tension due to the surplus material that was provided (Fernfors at page 8, lines 5-10). Accordingly, Fernfors teaches that it is necessary for the fastener strips to have a surplus loop of material.

Applicants submit, however, that Datta, Pohjola or Rajala do not disclose or suggest an apparatus or method for engaging and transferring a strip having a loop of surplus material, especially when the surplus material is *facing towards*, and would necessarily have to be engaged by, the engaging surface of the transfer apparatus. Rather, the devices of those references engage flat members, for example by way of a vacuum – there is no teaching that the devices can engage a surface having a loop or surplus material (*see* Datta at Col. 12, lines 25-41 (“the platens can slidably rotate on the surface of the vacuum plates while applying a vacuum pressure to the loop material 60”) and Fig. 6; *see* Pohojola at Col. 6, lines 20-39 (web strips 18 and 20 adhered by vacuum) and Fig. 4; *see* Rajala at Col. 19, lines 27-31 (suction applied to discrete parts)). Indeed, the vacuum disclosed by all three references would remove the surplus material facing towards the engaging surface, and there is no teaching of how to accommodate such material.

On this point, Applicants strongly disagree with the Examiner’s assertion that the fact that Fernfors “has a loop of surplus material is *irrelevant* to the obviousness statement of how it is known in the art to apply fastener material to base webs” (Office Action at 18; *see also* Interview Summary) (emphasis added). Indeed, the entire premise of Fernfors is *dependent* on the surplus material, which allows the body panels to be separated and cut (*see, e.g.,* Abstract “[D]ue to the surplus of material, the strips (8, 13) are not ruptured and they provide a zone between the separated edges of the article.”) Indeed, such an assertion by the

Examiner is classic hindsight analysis, which ignores that the references must be viewed in their *entirety* (see MPEP 2143).

Applicants further dispute the Examiner's assertion that the strip 5 can serve as the fastener material (Interview Summary). Applicants first dispute that the strip 5, to the extent it is needed at all (see Fernfors at page 6, line 10), constitutes a "fastener material" as recited in claim 1. Rather, the Fenfors strip 5 is a landing material (Fernfors at page 6 – "The application of strip 5 is however only required when the reclosable element of strip 8 . . . cannot releasably adhere by itself to the surface to which strip 5 has been applied), which provides an engagement surface for the fastener material, similar to the landing member 100 described in Applicants specification (see, e.g., Specification at page 8, lines 25-27; page 35, line 29 to page 36, line 8). Applicants consistently distinguished a fastener material from a landing material (see e.g., Specification at page 32, lines 17-24; page 35, line 29 to page 36, line 9), and it is improper for the Examiner to interpret claim 1 as including a landing material within the scope of the recited fastener material.²

Moreover, the strip 5 does not have any tabs or other characteristics requiring it to be oriented in any particular fashion. Accordingly, any rotation of the strip 5 in Fenfors would be extraneous, requiring an extra step at additional costs and opportunity for break down in the system. Indeed, when a line of separation is formed in the strip prior to its application so as to be aligned with a line of separation in the underlying web (Fenfors at 6, lines 19-25), the strip is necessarily traveling in the machine direction such that it does not need to be

² That is not to say that a landing material attached to a fastener material is not within the scope of claim 1, but rather that strip 5 does not constitute a fastener material to the extent that the Examiner is arguing that it could be cut and rotated independent of strip 8.

rotated. Accordingly, Fernfors also teaches against, and does not disclose or suggest, rotating the strip 5 prior to its application.

Finally, Applicants respectfully disagree with the Examiner's assertion that Applicants have not traversed the "well-known" statements about the art in the prior Office Action, and that such statements were therefore considered as being acquiesced to by Applicant (Office Action at 19). All such statements were made in the prior Office Action in connection with, or with reference to, specific recited references. Applicants rebutted the rejections with respect to those references – that is all that is required. Applicants cannot be expected to respond to general assertions, but rather only to the specific rejections set forth by the Examiner.

For all of these reasons, claims 1-31 should be passed to allowance.

2. Claim 15 Is Not Obvious Over UK Patent application GB 2 308 290 A to Fernfors in view of Japanese reference JP 03176053 to Takao, as further taken with USP 5,476,702 to Datta, USP 5,224,405 to Pohjola and/or USP 5,556,504 to Rajala

Claim 15 recites releasably engaging one of the front or rear body panels with a refastenable portion. Accordingly, if claim 1 is incorrectly interpreted such that a landing material (e.g., landing strip 5 of Fernfors) is construed as a fastener material, then the "fastener" strip 5 of Fernfors is not "releasably engaging" any of the body panels with a refastenable portion as recited in claim 15. Rather, strip 5 is necessarily fixed to the web 1, for example by adhesive or ultrasound welding, such that the strip 5, in turn, can be releasably engaged by strip 8 (Fernfors at page 5, lines 19-26).

Moreover, the strip 5 of Fernfors is applied with the loop landing elements facing *away from* the sheet, i.e., in a non-releasable engagement, such that the fastener strip 8 can

be releasably engaged therewith. Accordingly, Fernfors teaches against releasably engaging one of the front or rear body panels with a refastenable portion.

In contrast, if the “fastener material” of claim 1 is properly interpreted as not reading on the “landing material” strip 5 of Fernfors, then there is no suggestion to rotate the strips 8 or 13, with their surplus material, in view of Datta, Pohjola or Rajala as set forth above with respect to claim 1.

3. Claims 32, 34-41, 45, 48 and 49 Are Not Obvious Over USP 5,556,504 to Rajala in view of USP 5,499,219 to Roessler and/or USP 5,900,101 to Justmann³

The Examiner rejected claim 32 as being made obvious over USP 5,556,504 to Rajala in view of U.S. Patent No. 5,499,219 to Roessler and/or U.S. Patent No. 5,900,101 to Justmann. Applicants respectfully disagree. Specifically, there is no suggestion to combine Rajala with Roessler or Justmann.

Both Roessler and Justmann disclose systems for making fasteners moving in a machine direction that are applied to a substrate also moving in the *machine* direction - without rotating the fasteners about an axis perpendicular to the machine direction as recited in claim 32. For example, Justmann discloses cutting the fastener webs immediately prior to applying them to the article web moving in the same direction (Col. 11, lines 40-50, FIG. 2). Roessler similarly discloses securing the fasteners to an article moving in the same direction (see, e.g., FIG. 11).

Accordingly, Justmann and Roessler do not suggest and teach against rotating the fasteners once they are separated but before applying them to another web.

³ Applicants hereby argue the patentability of rejected claims 32, 34-41, 45, 48 and 49 together, including claims 41 and 45, which were rejected over the references applied to claim 32 in combination with EP reference 0755238 to Widlund.

Rajala also does not provide any motivation for incorporating the fasteners webs of Justmann or Roessler. While Rajala generally refers to discrete elements as including various fasteners, Rajala does not disclose what orientation such fasteners would have, if they formed the web 136, relative to the substrate web 134 prior to rotation, or what orientation the fasteners would have, if they were configured as the discrete parts 132, relative to the substrate web after rotation. In other words, Rajala does not disclose that the fasteners, if making up the webs 136, are oriented as taught by Justmann or Roessler. The fastener tabs, or other fastening portion (if existing at all), may extend in the cross direction or the machine direction prior to the rotation. Indeed, with respect to specifics, Rajala discloses only that the webs 136 are configured as spunbond layers with elastics (Col. 16, lines 41-60, FIG. 8). Since, as explained above, Justmann and Roessler teach against rotating streams of fasteners as oriented therein, there simply no suggestion to combine the references as suggested by the Examiner.

In this regard, the Examiner must consider the references as a whole, and not pick and choose portions thereof with hindsight analysis. When viewing the references as a whole, there simply is no suggestion to combine the references as suggested by the Examiner and claims 32 and 34-49 should be passed to allowance.

4. Claims 32 and 41-47 Are Not Obvious Over UK Patent application GB 2 308 290 A to Fernfors in view of EP 0755238 to Widlund and USP 5,556,504 to Rajala in view of U.S. Patent No. 5,499,219 to Roessler and/or U.S. Patent No. 5,900,101 to Justmann

As with Claim 1, the Examiner asserts that Fernfors does not disclose the particulars of applying a fastener material to a web. Applicants strongly disagree. Fernfors discloses a particular way of applying a fastener material that teaches against the combination of Rajala as set forth above. Accordingly, the Examiner's rejection should be withdrawn on this basis alone.

Moreover, Fernfors also teaches against incorporating the two-fastener embodiment disclosed in Widlund. In particular, the two fasteners of Widlund are positioned on opposite sides of an imaginary blank line separating the garments (Widlund at Col. 7, lines 35-45), without the fastener material bridging the gap across the line. This is the exact opposite of Fernfors, which discloses the necessity of *bridging* the gap, such that the fastener material 8, 13 can then be welded and subsequently cut (Fernfors at page 8, line 5 to page 9, line 12). Accordingly, there also is no suggestion to combine Widlund with Fernfors.

Finally, there is no suggestion to combine Roessler and Justmann with Rajala for all of the reasons set forth above.

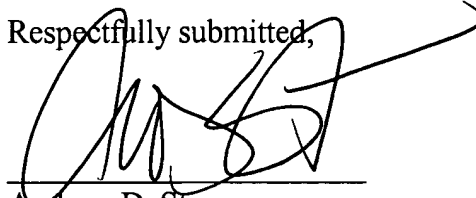
For all of these reasons, claims 32 and 41-47 should be passed to allowance for this additional reason.

5. Conclusion

The cited references do not provide a valid basis for a *prima facie* obviousness rejection of the present claims. Accordingly, Appellants submit that the present invention is

fully patentable over the cited references, and the Examiner's rejections should be
REVERSED.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Stover', written over a horizontal line.

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APPENDIX A

The claims at issue in this appeal are as follows:

1. A method for manufacturing a refastenable absorbent garment comprising:
 - moving a continuous absorbent garment subassembly in a first machine direction, wherein said continuous absorbent garment subassembly comprises a continuous front body panel web having a terminal crotch edge and a terminal waist edge, a continuous rear body panel web having a terminal crotch edge and a terminal waist edge, wherein said terminal crotch edges of said continuous front and rear body panels are spaced apart in a cross-direction, and a plurality of discrete crotch portions spaced along said first machine direction and extending between said continuous front and rear body panel webs and across said spaced apart terminal crotch edges of said continuous front and rear body panels, wherein said crotch portions each have opposite terminal ends spaced in said cross direction and spaced from said terminal waist edges of said continuous front and rear body panels;
 - moving a fastener material in a second machine direction;
 - cutting said fastener material to define a plurality of fastener members;
 - successively rotating each of said fastener members about an axis substantially perpendicular to said second machine direction; and
 - applying each of said rotated fastener members to one of said continuous front and rear body panel webs.
2. The invention of claim 1 wherein said moving said fastener material in said second machine direction comprises moving at least two strips of said fastener material in said second machine direction.
3. The invention of claim 2 wherein said moving at least said two strips of said fastener material in said second machine direction comprises moving a web of fastener material in said second machine direction, cutting said web of fastener material along said second machine direction and thereby forming said at least said two strips of said fastener material.

4. The invention of claim 3 further comprising separating said at least said two strips in said cross direction to form a spaced apart relationship therebetween.

5. The invention of claim 3 wherein said cutting said web of fastener material along said second machine direction comprises making a serpentine cut along said second machine direction and thereby forming a plurality of tabs on two strips of fastener material.

6. The invention of claim 5 wherein said axis is a first axis and further comprising rotating each of said two strips of fastener material along a second axis parallel to said second machine direction such that said plurality of tabs on each of said at least two strips face outboard in opposite directions.

7. The invention of claim 2 wherein said cutting said fastener material to define a plurality of fastener members comprises cutting each of said at least two strips of fastener material to form at least two streams of said plurality of fastener members.

8. The invention of claim 7 wherein said successively rotating each of said fastener members comprises successively rotating each of said fastener members in each of said at least two streams of said plurality of fastener members.

9. The invention of claim 8 wherein said at least two streams of said plurality of fastener members comprises a plurality of fastening systems, wherein each of said plurality of fastening systems comprises one of said fastener members from each of said streams of said plurality of fastener members.

10. The invention of claim 9 wherein said successively rotating each of said fastener members in each of said at least two streams of said plurality of fastener members comprises simultaneously rotating said fastener members in each of said fastening systems.

11. The invention of claim 10 wherein said applying each of said rotated fastener members to said one of said continuous front and rear panel webs comprises successively

applying each of said fastening systems to said one of said continuous front and rear panel webs.

12. The invention of claim 9 wherein said at least two streams of said plurality of fastener members comprises two streams of said plurality of fastener members, and wherein said successively rotating each of said fastener members in each of said two streams of said plurality of fastener members comprises successively, simultaneously rotating pairs of said fastener members each comprised of one fastener member from one of said plurality of fastening systems and one fastener member from a next successive fastening system and wherein said applying each of said rotated fastener members to said one of said continuous front and rear panel webs comprises applying said plurality of fastening systems to said one of said continuous front and rear panel webs by successively applying said pairs of fastener members to said one of said continuous front and rear panel webs.

13. The invention of claim 12 wherein said fastener members in each of said pairs of fastener members each comprise at least one tab member facing away from said at least one tab member of the other fastener member of said pair of fastener members.

14. The invention of claim 9 wherein said at least two streams of said plurality of fastener members comprises a first and second stream of said plurality of fastener members, and wherein said successively rotating each of said fastener members in each of said at least two streams of said plurality of fastener members said applying each of said rotated fastener members to said one of said continuous front and rear panel webs comprises rotating each of said fastener members in said first stream of said plurality of fastener members and applying each of said rotated fastener members in said first stream to said one of said continuous front and rear panel webs at a first location and rotating each of said fastener members in said second stream of said plurality of fastener members and applying each of said rotated fastener members in said second stream to said one of said continuous front and rear panel webs at a second location, wherein said second location is located downstream of said first location.